

1 H97sINRC

2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 IN RE: TERRORIST ATTACKS ON SEPTEMBER 11, 2001

5 03 MD 1570 (GBD) (SN)

6  
7  
8 New York, N.Y.  
9 September 7, 2017  
10 3:30 p.m.

11 Before:

12 HON. SARAH NETBURN,

13 U.S. Magistrate Judge

14 APPEARANCES

15 SIMMONS HANLY CONROY  
16 Attorneys for the Burnett plaintiffs  
17 BY: ANDREA BIERSTEIN

18 KREINDLER & KREINDLER  
19 Attorneys for the Ashton plaintiffs  
20 BY: ANDREW J. MAHONEY  
21 JAMES KREINDLER

22 COZEN O'CONNOR  
23 Attorneys for Federal Insurance plaintiffs  
24 BY: SEAN P. CARTER

25 MOTLEY RICE  
26 Attorneys for the Burnett plaintiffs  
27 BY: ROBERT T. HAEFELE

28 ANDERSON KILL  
29 Attorneys for the O'Neill plaintiffs and putative class  
30 BY: BRUCE STRONG  
31 ETHAN W. MIDDLEBROOKS

1 APPEARANCES  
2 (Continued)

3 JONES DAY  
4 Attorneys for Defendant Dubai Islamic Bank  
5 BY: STEVEN T. COTTREAU

6 BERNABEI & KABAT, PLLC  
7 Attorneys for Defendants Dr. Al-Turki, et al.  
8 BY: ALAN KABAT

9 LEWIS BAACH KAUFMANN MIDDLEMISS PLLC  
10 Attorneys for Defendants IIRO and MWL  
11 BY: WALEED NASSAR

12 MOLOLAMKEN  
13 Attorneys for Defendant Dallah Avco  
14 BY: ROBERT K. KRY

15 SALERNO & ROTHSTEIN  
16 Attorneys for Defendant Yassin Kadi  
17 BY: AMY ROTHSTEIN  
18 PETER C. SALERNO

1 (Case called)

2 THE COURT: Good afternoon.

3 MS. BIERSTEIN: Good afternoon, your Honor. Andrea  
4 Bierstein, Simmons Hanly Conroy, for the Burnett plaintiffs in  
5 the PEC.

6 MR. MAHONEY: Good afternoon, your Honor. Andrew  
7 Mahoney for the Ashton plaintiffs in the PEC.

8 MR. CARTER: Good afternoon, your Honor. Sean Carter  
9 from Cozen O'Connor for the federal plaintiffs.

10 MR. HAEFELE: Good afternoon, your Honor. Robert  
11 Haefele from Motley Rice here for the Burnett plaintiffs in the  
12 PEC.

13 MR. KREINDLER: Good afternoon, your Honor. Jim  
14 Kriendler, Kriendler & Kreindler, for the Ashton plaintiffs and  
15 the Plaintiffs' Committee.

16 MR. COTTREAU: Good afternoon, your Honor. Steve  
17 Cottreau, Jones Day, on behalf of the Dubai Islamic bank.

18 MR. KABAT: Good afternoon, your Honor. Alan Kabat  
19 from Bernabei & Kabat for Dr. Al-Turki et al.

20 MR. NASSAR: Good afternoon, your Honor. Waleed  
21 Nassar from Lewis Baach on behalf of the Muslim World League  
22 and the International Islamic Relief Organization.

23 MR. KRY: Good afternoon, your Honor. Robert Kry from  
24 MoloLamken for Dallah Avco.

25 MS. ROTHSTEIN: Good afternoon, your Honor. Amy

1 Rothstein from Salerno & Rothstein for Yassin Kadi.

2 MR. SALERNO: Good afternoon, your Honor. Peter  
3 Salerno, Salerno & Rothstein, for Yassin Kadi.

4 THE COURT: Yes.

5 MR. STRONG: Bruce Strong and Ethan Middlebrooks,  
6 Anderson Kill, on behalf of the O'Neill plaintiffs, the  
7 putative class, and the PEC.

8 THE COURT: Thank you. Good to see you all. I hope  
9 everybody had a nice summer.

10 Let me tell you what I have on my agenda for today.  
11 I may take things a little out of turn. I want to check in  
12 on the status of discovery, make sure that I have all of the  
13 relevant dates set, and make sure that you all have your  
14 expectations set. I want to talk about the motions to compel,  
15 which obviously is related to the status of discovery. Then I  
16 want to talk about the deposition protocol, and I'm prepared to  
17 rule on the disputed areas of that deposition protocol, but  
18 more importantly, I want to talk about depositions.

19 The thing that was missing from the deposition  
20 protocol, I can see that you all spent a lot of time and put a  
21 lot of hard work in drafting that protocol, but in my view it  
22 was missing some key information that I had expected to be in  
23 there, namely when those depositions are going to take place  
24 and how many are reasonably anticipated. I know in the  
25 protocol there is a triggering date for beginning the

1 meet-and-confers between the parties, about how many  
2 depositions are likely to be undertaken, and I am concerned  
3 that that process would put us deep into next year before any  
4 deposition is taken and I don't want that. I want to talk with  
5 you all about a way to make sure that we are taking depositions  
6 in this case in the spring of next year. I believe that that  
7 is reasonable and appropriate, and I want to talk to you about  
8 how to get that done. Then I have a few housekeeping matters.

9           Let me begin with the status of discovery as I  
10 understand it. It is my understanding that with respect to the  
11 jurisdictional defendants, paper discovery has been completed;  
12 that with respect to all of the merits defendants, other than  
13 the World Assembly of Muslim Youth and WAMY International,  
14 paper discovery has been completed as well, obviously with the  
15 asterisks about motions to compel.

16           I am expecting status letters from the parties on  
17 September 29 for those defendants for whom paper discovery  
18 should have been completed by now, and I am expecting a status  
19 letter on the WAMY production on November 17. My hope is that  
20 we will be teeing up motions to compel, if any, in that case  
21 toward the end of this year.

22           There is also the motions to compel that have been  
23 filed or that have been raised as possible in the status letter  
24 that was recently filed in connection with the jurisdictional  
25 defendants.

1 Who wants to speak from the plaintiff's side with  
2 respect to that?

3 Mr. Carter?

4 MR. CARTER: Your Honor, I can address those issues.

5 As a general matter, I think all of the dates and  
6 status, as your Honor ticked off, are accurate. There is one  
7 issue ongoing with the plaintiffs and Dubai Islamic bank.

8 THE COURT: This courtroom is beautiful but has  
9 terrible acoustics. Please use the microphone.

10 MR. COTTREAU: There is an ongoing dialogue between  
11 the plaintiffs and counsel for Dubai Islamic Bank concerning a  
12 universe of search terms that was the subject of a prior motion  
13 to compel relative to which Judge Maas had issued an order, and  
14 we had some disagreement about the proper understanding and  
15 interpretation of that order. It's been an ongoing and  
16 productive dialogue, and we have gotten it narrowed down to,  
17 I think, a universe of 20 or so names that we are in dispute  
18 about. We are trying to resolve that hopefully in the next  
19 couple weeks. The hope is that we will resolve that and there  
20 will be no motion practice related to that. That is our  
21 aspiration at least.

22 THE COURT: With respect to Dubai Islamic Bank?

23 MR. CARTER: That's correct, your Honor.

24 THE COURT: That would cover all discovery disputes,  
25 this ESI issue is the only one at this point?

1                   MR. CARTER: I'm sorry, with regard to Dubai Islamic  
2 Bank?

3                   THE COURT: Yes.

4                   MR. CARTER: Because we haven't gone through the  
5 process of doing our full status report, I want to reserve. I  
6 think there was also an issue as to whether or not they have  
7 complied to Judge Maas' order to search for certain documents  
8 relating to the 1998 Embassy bombings. I raised that with them  
9 as well. Off the top of my head, there are a few issues that  
10 we are trying to resolve.

11                  THE COURT: That sounds promising. Hopefully when we  
12 get that status letter on the 29th, those issues will be  
13 narrowed. If they are not narrowed and if a motion is going to  
14 be filed, I do want that be to filed soon after the status  
15 letter. When I say "soon after," I mean certainly within  
16 30 days after the status letter.

17                  One of the housekeeping issues I want to mention is  
18 the length of status letters. I don't need a full motion in  
19 a status letter. That's the point of a status letter. You  
20 should be prepared to file that motion soon afterwards. It may  
21 be there are certain things I can resolve without additional  
22 motion practice, or I can call the parties and we can have a  
23 conference, but my hope is that we are going to tee up these  
24 motions sooner rather than later.

25                  MR. CARTER: Your Honor, with the Dubai Islamic Bank

1 motion to compel, I think that timeline is fine. With regard  
2 to the Muslim World League, IIRO, and World Assembly of Muslim  
3 Youth, as your Honor is aware, they were given extensions to  
4 complete their productions and we are just working through  
5 those. We have received literally hundreds of thousands of  
6 documents within the last few months from those defendants, and  
7 so I think we might be needing a bit longer after the  
8 September 29 deadline to try and identify what the universe of  
9 motions will be and to get those on file. We are dealing, in  
10 certain of these cases, with productions that encompass a  
11 million pages, and we think there is quite a bit missing. It  
12 may be a bit of a more involved process in those cases.

13 THE COURT: Well, I'll get the status letter with  
14 respect to that production as well on September 29.

15 MR. CARTER: You will, your Honor.

16 THE COURT: Hopefully we'll have some clarity there,  
17 that will have been 45 days from the close of that discovery,  
18 and obviously what was produced prior to that close deadline,  
19 you should be reviewing on an ongoing basis. My hope is that  
20 you'll have a pretty good handle by the 29th as to what remains  
21 and where you think there is room for dispute.

22 With respect to each of the individual defendants,  
23 I am comfortable individual conferences with the relevant  
24 representatives from the Plaintiffs' Executive Committee and  
25 the relevant lawyers so everybody doesn't need to be involved

1 to move those disputes through. But what I don't want to have  
2 is a period of months of meet-and-confer, and then months to  
3 prepare a motion, and all of a sudden it is June of 2018 and we  
4 are not moving the case forward. I have a significant interest  
5 in pushing this case forward at this point.

6 MR. CARTER: Your Honor, we share that, and I think in  
7 those cases we have had numerous meet-and-confers along the way  
8 and we are just at an impasse, ultimately.

9 THE COURT: That is what I'm here for.

10 So on the 29th, I'll get a letter with respect to the  
11 Dubai Islamic Bank production and with respect to the Muslim  
12 World League and International Islamic Relief Organization.  
13 Hopefully we'll have a handle roughly on what has been  
14 produced, what remains outstanding, and where to go from there.  
15 Obviously, the same will go with respect to the WAMY documents,  
16 though we're two months behind with respect to that.

17 Can we turn to the jurisdictional discovery. The  
18 status letter that I received suggested that there had been  
19 several orders that were issued by Judge Maas in 2015 and 2016,  
20 and that there was a view that there had not been compliance  
21 with those orders. Specifically I'm looking at the order from  
22 Judge Mass related to Muslim World League and IIRO.

23 I understand that Judge Maas ordered a sworn  
24 statement, a certification of the completeness of the  
25 production, that a privilege log be produced, and I understand

1 that there is also, related to some of the individual  
2 defendants, a question about passports, both personal passports  
3 and governmental passports.

4 I'm not sure at this point a motion to compel is the  
5 right motion to be filing. It seems to me a motion for  
6 sanctions is the appropriate motion to be filing.

7 MR. CARTER: Your Honor, we wanted, obviously, to give  
8 the defendants an opportunity to cure the problems, and that is  
9 why we went into the level we did in the status report. I  
10 think we agree, if they haven't complied, that's the  
11 appropriate recourse.

12 THE COURT: Counsel, is there an intention to comply  
13 any further with Judge Maas' orders?

14 MR. KABAT: With respect to the individual  
15 defendants --

16 THE COURT: I'm sorry. Put the microphone to you as  
17 well.

18 MR. KABAT: With respect to the individual defendants,  
19 we had to wait until the World League completed the production  
20 with them to be able to certify that all documents had been  
21 produced and abeyances are involved and so forth, and that  
22 production was completed two weeks ago. We submitted the  
23 certification to our client for their review, and we hope to  
24 have them sign within a week or two, certainly by the end of  
25 the month.

1                   THE COURT: The certification will be provided in the  
2 next two weeks.

3                   What about with respect to passports? My  
4 understanding is that there was a response to one of the  
5 discovery demands that the officials were traveling primarily  
6 on official passports which were not in their possession.

7                   I don't understand why your clients can't obtain  
8 a certified copy of their passports from the relevant  
9 government entity in order to produce that, and then there is  
10 also a question about any personal passports that they may have  
11 and travel on.

12                  MR. KABAT: Our client inquired about that, and we  
13 have not been successful so far. We will keep on working on  
14 it. I'm sorry.

15                  THE COURT: The alternative, as I mentioned, I don't  
16 think a motion to compel the production is the right posture at  
17 this point. You've been ordered to produce these documents.  
18 You failed to do so.

19                  What I am going to do is set a deadline for the  
20 sanctions motion. I'll give you time to have one last  
21 opportunity to cure, to produce these documents, but if they  
22 can't be, if they aren't produced within the next 30 days, I  
23 am going to invite a sanctions motion from the Plaintiffs'  
24 Executive Committee.

25                  Today is September 7. Why don't we set Friday, the

1       6th of October, as a deadline for any sanctions motion with  
2 respect to those individual defendants. Is two weeks enough  
3 time to respond to that motion?

4               Any opposition to that motion will be filed on  
5 October 20, and if the Plaintiffs' Executive Committee wants to  
6 file a reply, that will be filed October 27.

7               Who is here on behalf of Mr. Al-Buthe?

8               MR. KABAT: I am.

9               THE COURT: You as well?

10              Same question. I think there's been some productions  
11 and certifications that Judge Maas previously ordered.

12              MR. KABAT: We should be able to have the  
13 certification within a week or two, or certainly by the end of  
14 the month, and I am going to have to review the rest of the  
15 documents they claim we haven't produced to double-check again  
16 what we have. It may be that he simply does not have those  
17 documents. I need to double-check with our client on that.

18              THE COURT: OK. If you can continue the  
19 meet-and-confer with respect to all those individuals,  
20 hopefully there will be a cure and the appropriate  
21 certifications will be provided. To the extent your clients  
22 are withholding any documents on privilege grounds, that needs  
23 to be produced, a privilege log needs to be produced, I  
24 understand that hasn't been produced yet, and obviously  
25 certified copies of both the official passport and any personal

1                   passport that would be in your clients' possession, that needs  
2                   to be produced. Your time to cure is up until October 6, at  
3                   which time the sanctions motion will be filed.

4                   MR. KABAT: I would just note that Mr. Al-Buthe has  
5                   already submitted his passport. That is not an issue for him.

6                   THE COURT: Terrific. Thank you.

7                   Any issues with respect to obviously Dallah Avco, we  
8                   already addressed motions to compel. I interpret the letter to  
9                   say there is nothing further that the Executive Committee is  
10                  seeking. With respect to Mr. Jelaidan, I understand we are  
11                  trying to get the OFAC license issue squared away. I don't  
12                  think there is anything for the court to do on that defendant.

13                  MR. CARTER: Your Honor, there were two issues.

14                  With regard to Dallah Avco, we thought there was some  
15                  ambiguity in the letter we received from Mr. Kry about the  
16                  scope of the search, for meetings within Dallah Avco about the  
17                  September 11 investigation pursuant to your Honor's order.

18                  I spoke to Mr. Kry. It sounds as though from his  
19                  explanation to me that they have searched for all potential  
20                  meetings, but we are just asking for clarification of that in  
21                  writing.

22                  THE COURT: Can you provide that?

23                  MR. KRY: I'll raise that with my client and provide  
24                  the appropriate clarification.

25                  THE COURT: If you can get that done in the next two

1 weeks, that would be terrific.

2 MR. CARTER: Your Honor, with Mr. Jelaidan, we  
3 mentioned in the letter that one of the communications to OFAC  
4 included, as attachments to OFAC, two bank records relating to  
5 accounts that were held by Mr. Jelaidan. We understand that  
6 they were seeking release of funds from those banks. One of  
7 the long-running issues that we have had relative to which  
8 Judge Maas issued a number of orders was that Mr. Jelaidan had  
9 not produced his banking records, claimed that he was unable to  
10 get them. Judge Mass ultimately ruled that he was able to get  
11 them, had not undertaken steps, and needed to do so.

12 The communication to OFAC suggests the existence of  
13 banking records that we have never been provided. It is hard  
14 for us to tell because they weren't provided. Informally we  
15 ask that we be able to see those to make sure they are not new  
16 documents that have never been then produced, but we haven't  
17 gotten a response.

18 THE COURT: Who is here on behalf of Mr. Jelaidan?  
19 Anyone?

20 There is a lawyer on this case. He writes me letters  
21 every 30 days.

22 MR. CARTER: Mr. McMahon is counsel to Mr. Jelaidan.

23 THE COURT: Anyone from the Defendants' Executive  
24 Committee know whether he had intended to come to this  
25 conference?

1                   MR. KRY: Your Honor, it is my understanding that he  
2 was not able to attend today.

3                   THE COURT: I think what I will do is issue an order  
4 directing the parties to continue that meet-and-confer, and I  
5 am going to set the October 6 deadline for the sanctions motion  
6 with respect to the various individual charity officers as a  
7 deadline for you to file any motion before me with respect to  
8 those bank records.

9                   MR. CARTER: Thank you, your Honor.

10                  THE COURT: In addition, there was a submission by  
11 Mr. Kadi addressing issues with respect to the plaintiffs'  
12 production in response to discovery demands. Obviously the  
13 Plaintiffs' Executive Committee also raised issues with respect  
14 to Mr. Kadi's production.

15                  Who wants to tell me where we are on this issue?

16                  MR. MAHONEY: Andrew Mahoney, your Honor.

17                  I spoke to Mr. Salerno over the last several days,  
18 including today. We have substantially narrowed a lot of the  
19 issues. Some of them are more ministerial. I am not prepared  
20 to say that we anticipate motion practice, but there was an  
21 extensive privilege log that was given to us that I want to  
22 discuss with Mr. Salerno in the next week or two to see whether  
23 or not we will make a motion regarding some of the documents he  
24 has identified there. He has represented that he has produced  
25 everything. We will get that certified, but I think we have

1 come a long way in narrowing the issues even since the status  
2 letter to the court.

3 THE COURT: Terrific. Is that narrowing issues that  
4 both sides raised?

5 MR. MAHONEY: I think so. There was a question about  
6 interrogatories that they raised. We believe they are  
7 contention interrogatories that are tabled for the time being.  
8 There is a little bit of a disagreement about that, and I don't  
9 know if Mr. Salerno wants to speak to that today or table that  
10 for a later time.

11 I think that was an area we did not agree on. But  
12 beyond that, I think there was some issue with regard to  
13 identifying which of the plaintiffs' production were specific  
14 to Mr. Kadi. Some of that has already taken place and some of  
15 that will take place in the next week or two. Mr. Kadi is  
16 actually handling some of that. He recently got new documents,  
17 I think only a small number of which will pertain to Mr. Kadi.  
18 They are interested in getting that. We agreed to do that.

19 THE COURT: Mr. Salerno, anything to add?

20 MR. SALERNO: Just, your Honor, with respect to  
21 interrogatories. We don't want to go to motions to compel and  
22 pressing the court on that issue if the court feels this is not  
23 the right time.

24 We disagree with the plaintiffs that there was any  
25 tabling of interrogatories that is applicable now. The tabling

1 was years ago. At some point, tabling ceases. But if now is  
2 not the right time from the court's point of view, we don't  
3 want to press it. We do want answers to the interrogatories,  
4 because after having produced voluminous amounts of discovery  
5 post remand and getting voluminous amounts of discovery from  
6 the plaintiffs, we would like to know what claims now the  
7 plaintiffs see against our client for us to respond to, and all  
8 we have is pleadings that predate the decisions on our motion  
9 to dismiss. Interrogatory answers would be helpful, but if the  
10 court feels that this is not the right time, as I said, we  
11 don't want to burden the court with unnecessary motions either.

12 THE COURT: I haven't reviewed the specific  
13 interrogatories to rule one way or another whether or not they  
14 are contention interrogatories or close to contention  
15 interrogatories.

16 Typically my practice is to have some depositions go  
17 forward before contention interrogatories are propounded. I  
18 don't know, because I haven't seen these interrogatories,  
19 whether or not in this instance that makes the most sense. I  
20 certainly understand your position that you need some clarity  
21 as to what exactly is being alleged.

22 I am not prepared to rule one way or the other as to  
23 whether they are sort of back on the table or off the table or  
24 where they stand. Without having reviewed them, I can tell you  
25 that my practice generally is that I think it is more

1 productive to have depositions go forward and then propound  
2 those interrogatories at the conclusion of that.

3 I guess at this point I have to leave it to you  
4 whether or not you want to raise the issue with me, given the  
5 little you now know about my practice, and decide whether or  
6 not I should review the interrogatories and make a specific  
7 ruling.

8 MR. SALERNO: We will confer among ourselves about  
9 that and with the plaintiffs and see if we can make progress  
10 and maybe reach an appropriate conclusion on that.

11 THE COURT: Can we set the same October 6 deadline?

12 I think I am going to set the same October 6 deadline  
13 for motion practice on this particular schedule as well. That  
14 gives you all a month to continue the conversation, and if you  
15 decide that you want to press the issue of interrogatories or  
16 something else, it should be in a motion filed on October 6.

17 MR. SALERNO: Your Honor, could we have one more week?  
18 Only because we have a vacation planned and it is already  
19 bought and paid for a week in late September.

20 THE COURT: Sure. Everything will get shifted a week.

21 Instead, that particular motion with respect to Kadi  
22 would be filed on October 13, with opposition papers filed on  
23 October 27, and any reply brief filed on November 3.

24 MR. SALERNO: The only other issue we have with the  
25 plaintiffs, your Honor, it is the reciprocal of the issues that

1       they have with us, but we have completed our document  
2       discovery. They have told us informally that they had  
3       completed their document discovery, that they are not  
4       withholding anything pursuant to any objection under privilege.

5           They have now told us informally that there are no  
6       documents to go on a privilege log, keeping in mind that there  
7       was a temporal deadline set for privilege logs, temporal  
8       cutoff. The documents that are privileged postdating 9/11 need  
9       not be logged.

10          We filed a privilege log, the one that Mr. Mahoney  
11       spoke about with the 277 documents, all pre 9/11 documents. We  
12       filed the log, we served the log, all we need is the formal  
13       statement from them, as opposed to the informal one which they  
14       want from us, that no privilege log is necessary, which is  
15       probably the case. These are mere formalities and ministerial  
16       matters, just as they are --

17           THE COURT: Sure. Judge Maas obviously decided that  
18       there was sufficient question about the efforts to search for  
19       certain documents that he decided. And this was back, I think,  
20       in March of 2016 that certain defendants needed to certify that  
21       they had behaved appropriately. I am not saying you are, but I  
22       am now questioning whether or not a certification from the  
23       plaintiffs is necessary.

24           Typically in litigation, lawyers who are officers of  
25       the court make a representation to the court, they stand by it,

1 and I assume that it is truthful. If there is something you  
2 think about the plaintiffs' informal representations to you  
3 that is unsatisfactory or that you think leaves you with doubt,  
4 you should bring it to my attention. But typically I don't  
5 require a party to certify that they are completed with  
6 discovery.

7 MR. SALERNO: Fair enough, your Honor. I guess  
8 neither of us were clear on that. I have no problem whatsoever  
9 with the certification that they are done. I don't know if  
10 they have a problem with our certification that we are done.  
11 They haven't expressed one really, except there was some  
12 discussion of it just today. We don't have a problem with  
13 that. If it is not necessary, then we don't want it.

14 THE COURT: Why don't I let you all continue this  
15 conversation about whether the production is completed or not  
16 or whether or not there is anything outstanding. I mean, I see  
17 that the requirement for a certification -- at least in my  
18 practice, I don't know what Judge Maas was thinking when he  
19 issued those rulings -- in my practice it is because there is  
20 some doubt about whether or not the producing party has been  
21 adequate in his or her searching and there is a requirement or  
22 a need for some sort of something more formal to rely upon. If  
23 there is no reason, I wouldn't ordinarily require lawyers to  
24 certify their production.

25 MR. SALERNO: Fair enough, your Honor.

1                   THE COURT: Thank you. I think that addresses and  
2 gives me some sense of where we are on discovery.

3                   So we've got deadlines set for any of the  
4 jurisdictional defendants and we are going to get some status  
5 letters in the coming months with respect to the merits  
6 defendants. If we think that there is a need for motion  
7 practice, I am going to set deadlines for that motion practice.  
8 They will be reasonable, but they will not be extended deep  
9 into 2018. We will set deadlines as necessary.

10                  If you reasonably anticipate motion practice, you can  
11 put in your status letter that you do and propose dates. I  
12 would prefer those dates to come on consent from both parties,  
13 and to the extent you're asking for something beyond a 30-day  
14 window to file a motion, I am going to want to hear why that is  
15 necessary.

16                  Let's turn to the deposition protocol. I think what  
17 I am going to do, I've read the letters, I've looked over the  
18 protocol, obviously. I don't think I need argument from  
19 anyone, so I am going to tell you how I am going to rule, and  
20 then I want to have a conversation about some of the  
21 information that is missing, in my view, in this protocol.

22                  The first issue is with respect to paragraph six.  
23 There was a question about whether or not it would apply to  
24 jurisdictional defendants. I don't think there is a basis for  
25 Rule 26(a) disclosure requirements to apply to jurisdictional

1 defendants. Certainly in the course of that jurisdictional  
2 discovery, if there is an appropriate interrogatory or  
3 information is provided by defendants, witnesses will be  
4 disclosed. But I don't think procedural Rule 26(a) is  
5 implicated, and I think that the jurisdictional defendants have  
6 raised an adequate explanation for why it would be unfair for  
7 them to comply with Rule 26(a), given the posture of the case.

8 The next issue I flagged is an issue which you did not  
9 flag. I just want to mention it. I don't necessarily need to  
10 deal with it quite yet. It will go to this general issue of  
11 when we are going to get these depositions taken.

12 I am concerned in paragraph 25, the parties propose  
13 that notices for depositions that are going to take place in  
14 the United States be provided within 21 days, and there is a  
15 45-day deadline to schedule notices for depositions outside the  
16 United States. I don't think that those sorts of deadlines are  
17 necessary. Those seem excessive to me. I actually think, and  
18 I am going to be ruling, that some of these depositions are  
19 going to take place outside of the United States, potentially  
20 many of them. Trying to schedule depositions, with all of the  
21 moving parts that is inherent in this case, with 45 days'  
22 notice, in my mind, is an impossibility and will only create  
23 problems and disputes about when people are changing dates, and  
24 then do we need to restart some 45-day clock. I don't  
25 necessarily have dates that you should put into that, but I do

1 think that 21 days and 45-day system is too long.

2           With respect to paragraph 27, and as it deals with the  
3 location of the defendants, I am certainly mindful that the  
4 presumptive rule is that defendants are not required to appear  
5 in the forum jurisdiction for purposes of the deposition. So I  
6 reject the Plaintiffs' Executive Committee's proposal that all  
7 depositions take place here in the forum.

8           I did read the Plaintiffs' Executive Committee,  
9 setting forth all of their letter, setting forth all of the  
10 factors that courts consider when deviating from that  
11 presumptive rule. I find that they justify some limitations on  
12 the location of deposition, but not requiring that all  
13 depositions take place here. I think that the complexity  
14 associated with scheduling these depositions and coordinating  
15 them among various parties and interested actors, as well as  
16 some of the unique issues that are raised by requiring  
17 depositions to take place in Saudi Arabia, which is obviously a  
18 defendant in this case, or in the United Arab Emirates, where  
19 the defendant Dubai Islamic Bank has a major presence, I think  
20 create real issues here. I reject the proposal from the  
21 Defendants' Executive Committee that depositions occur in any  
22 nation, including where a deponent lives or works.

23           I am going to authorize the depositions to take place  
24 either in the forum jurisdiction or London, Paris, and Rome as  
25 acceptable locations. I do think that the protocol should

1 provide that upon the agreement of the parties, based on the  
2 convenience of the witness, a deposition may take place in some  
3 location other than those four presumptive locales. It may be  
4 that there is a Canadian citizen and everybody agrees that it  
5 makes sense to take that deposition, for convenience of the  
6 witness, in Canada, but if there can't be agreement, the  
7 presumptive locations will be New York, London, Paris, and  
8 Rome, and the New York jurisdiction doesn't carry any more  
9 weight.

10 For those defendants, of whom I am assuming there are  
11 many who are going to be coming from the Middle East, my  
12 assumption is that many of those depositions are going to take  
13 place in Western European cities.

14 MR. HAEFELE: Your Honor, Robert Haefele. I am sorry  
15 to interject here.

16 One thing I wanted to call your attention, it was  
17 actually plaintiffs that I think proposed to do Paris as one of  
18 the locations, it turns out I think Paris may be problematic  
19 because I think that there is a blocking statute that might  
20 prevent the depositions from taking place in Paris. If that is  
21 an issue, then it probably wouldn't be an appropriate location  
22 to have as a proper location for the depositions.

23 THE COURT: You said there is a blocking statute?

24 MR. HAEFELE: I think the blocking statute that would  
25 forbid depositions American style, so to speak, from taking

1 place in Paris.

2 THE COURT: Yes.

3 MR. NASSAR: We have a couple questions on that. It  
4 is in relation to both of my clients I represent, Muslim World  
5 League and the International Islamic Relief Organization. Both  
6 of them are in Saudi Arabia. Visa issues are going to be a  
7 major concern for our clients, as well as many of the  
8 prospective witnesses that plaintiffs are interested in. In  
9 getting them to Western European countries is going to pose  
10 quite a challenge, especially given the nature of this  
11 litigation and what is alleged against them in particular.

12 Is this something we should write to you further on?

13 THE COURT: I'm happy to address these problems. I  
14 don't want a problem without a solution.

15 One of the things I want to talk about is, it seems to  
16 me today, if I forced you all to pick your depositions, you  
17 should be able to do a pretty good job. And so what I reject  
18 wholly in the protocol is this triggering date of May 2 as  
19 being the day that you start to talk about depositions.

20 I want to have a conversation with you all about when  
21 we can start identifying who is going to be deposed. Once we  
22 identify who is going to be deposed, you may be in a better  
23 position to say, my clients can very easily travel to Rome, or  
24 my clients can very easily travel to, I don't know, Tunisia, I  
25 don't know, some other country where everybody can agree there

1 is not a travel ban. I am not sure if Tunisia is one of them.  
2 That would be appropriate.

3 I think countries where there is serious travel ban  
4 issues are inappropriate. I think countries where women are  
5 going to be under some sort of disability, for lack of a better  
6 word, if we have female lawyers going to have some sort of  
7 restrictions, those countries are not appropriate, in my view,  
8 for depositions in this purpose.

9 MR. NASSAR: Sure. And on that point, in terms of  
10 alternatives, we have navigated numerous other federal  
11 litigations in the U.S., as well as the Cayman Islands.  
12 Depositions in the kingdom, in Saudi Arabia where, for whatever  
13 reason, maybe one side is not able to attend, but by video, by  
14 video link, and if that is also an acceptable alternative as  
15 well? That is something that we have done in numerous federal  
16 courts in relation to Saudi Arabia, some of the challenges that  
17 are poised by Saudi Arabian depositions.

18 THE COURT: Is that a case where Saudi Arabia was a  
19 defendant?

20 MR. NASSAR: Saudi Arabian interests. I don't  
21 represent Saudi Arabia, I represent two organizations, NGOs in  
22 Saudi Arabia. Those cases included Saudi Arabian interests,  
23 but not the kingdom itself.

24 THE COURT: Well, those are real concerns. Obviously  
25 if somebody can't appear in London for a deposition, then that

1 makes no sense in ordering that deposition.

2           But I want to be clear that I am rejecting both  
3 proposals from the parties that it will not be presumptively  
4 here in New York and it will not be presumptively where the  
5 witness lives or works. With some of the limitations that I  
6 have just outlined, certain countries I think are not going to  
7 be available. Whether or not, for instance, if we identify a  
8 particular witness from your client who, for whatever reason,  
9 it would be a significant hardship to travel or impossibility  
10 to travel to a country that the Plaintiffs' Executive Committee  
11 is prepared to travel to for purposes of the deposition, it may  
12 be that the Plaintiffs' Executive Committee is comfortable  
13 taking that deposition by video hook up with the person in  
14 Saudi Arabia and the lawyers in New York.

15           I am repeating myself a little bit, but what I want to  
16 make clear is that these conversations, I think, should be  
17 happening now, because I think you know who is going to be  
18 deposed, you have a sense of who you are going to be asking  
19 for. We should be having these conversations now. That would  
20 inform this protocol.

21           I think the problem with the protocol is that it is a  
22 little bit in a vacuum without actually thinking about carrying  
23 it out. It's got a lot of detail about the bells and whistles  
24 of the depositions, but I think it is missing some of the hard  
25 work about how many depositions are going to take place.

1           Both sides are going to leave the deposition phase of  
2 this case without having deposing every single person they want  
3 to depose. When are those depositions going to start taking  
4 place, how much time do you have for those depositions; those  
5 are the hard questions that we need to be asking now that I  
6 didn't see in the protocol.

7           So I think I've been clear, at least with respect to  
8 the locations, on what is not acceptable. Hopefully I have  
9 resolved that dispute among the parties, and I'll pass it on to  
10 you to have the conversation to create carve-outs for  
11 situations where there are witnesses who, for whatever  
12 political or legal reasons, are unable to travel to a country  
13 that the Plaintiffs' Executive Committee thinks is appropriate.  
14 And also maybe we scratch Paris, if Paris's civil system  
15 creates too much complications as far as enforcing the federal  
16 rules for these depositions.

17           Let me also talk, in paragraph 27 there is the issue  
18 of former employees. Again, we have a presumptive rule that  
19 I think is appropriate and correct, but in the unique  
20 circumstances of this case, I think, needs to be modified in  
21 part. Obviously it is correct that the defendant corporation  
22 does not and should not have an obligation to produce former  
23 employees for depositions. As a practical matter, however, it  
24 may be that the corporate defendants are the only entities that  
25 have any information about the whereabouts for witnesses that

1 the Plaintiffs' Executive Committee wishes to depose. I think  
2 a compromise proposal is appropriate.

3 The defendant corporation should be providing upon  
4 request, which may or may not have been made already, all of  
5 the last-known contact information for any former employees.  
6 To the extent the Plaintiffs' Executive Committee has  
7 identified former employees that they intend to depose, you  
8 should be providing those names now to the defendant  
9 corporations and the corporation should be providing last-known  
10 information.

11 Then the Plaintiffs' Executive Committee should take  
12 reasonable efforts to serve a notice of deposition on that  
13 person, and the burden is on the Plaintiffs' Executive to do  
14 that. You should make that first effort. If you're  
15 unsuccessful, I do think it is appropriate for the defendant  
16 corporation to provide reasonable assistance.

17 To the extent that there is a contact or some way to  
18 communicate, I think it is reasonable, given the length of time  
19 that has passed since this event, given the issues related to  
20 language, I think just the nature of this litigation in and of  
21 itself, I think, is fair. And the difficulties of the court  
22 enforcing its subpoena power in foreign jurisdictions, I think  
23 it is reasonable to ask the defendants, after the plaintiffs  
24 have exhausted their efforts, to undertake a reasonable effort  
25 to make the witness, the former employee, available.

1           However, the burden will never shift to the defendants  
2 to produce that witness, so the defendants have to make a  
3 reasonable effort after the plaintiffs have done so. But if  
4 ultimately that effort is unsuccessful, it will not be the  
5 burden on the defendants to produce that employee.

6           MR. HAEFELE: Your Honor, may I address that for a  
7 moment?

8           THE COURT: Sure.

9           MR. HAEFELE: My understanding is that the federal  
10 rules reach a little beyond just whether the person is a former  
11 employee or not. There is a term we use "managing agent" that  
12 extends a little bit beyond. There are circumstances where the  
13 case law has recognized the obligation of a defendant, a  
14 corporation, to produce a former employee or a former, I should  
15 say former, official or a person that speaks on behalf of the  
16 corporation, a person who has an identity that is sympathetic  
17 to the defendant corporation versus to the opposing side, the  
18 questioning party.

19           I just want to make sure and determine whether or not  
20 your ruling is intended to go to restrict that use of that term  
21 "managing agent?"

22           THE COURT: I haven't looked at this specific issue  
23 recently, but I have in the not-too-long distant past. My  
24 understanding of the law is that the defendant corporation does  
25 have an obligation to produce officer, directors, managing

1 agents, anyone who can bind the corporation that are current  
2 employees. And so to the extent you're seeking depositions of  
3 a president or director of WAMY, that would be the obligation  
4 of WAMY to produce that person.

5 If you're asking about former directors, people who  
6 once held a position of authority but have since left, I am not  
7 sure that the law covers those people.

8 MR. HAEFELE: I could give you a few citations, and  
9 maybe your Honor can look at them before you do the order?

10 THE COURT: Sure.

11 MR. HAEFELE: The few citations instances I have  
12 located are Independent Products Corporation v. Loew's at  
13 24 F.R.D. 19 (S.D.N.Y 1959); a Seventh Circuit decision,  
14 O'Shea v. Jewel Tea Corporation, 233 F.2d 530 (7th Cir. 1956);  
15 Petition of Manor Investment Corporation, 43 F.R.D. 299  
16 (Southern District 1967); Libbey Glass v. Oneida Limited,  
17 197 F.R.D. 342, that's a Northern District of Ohio from 1999;  
18 and Tomingas v. Douglas Aircraft, 45 F.R.D. 94. I know it is a  
19 Southern District case, but I don't have the year.

20 THE COURT: Thank you.

21 MR. KRY: Your Honor, if I can ask for clarification  
22 on one. My understanding is that under the rules, a foreign  
23 corporate defendant would not have any obligation, even for a  
24 current employee, to produce somebody unless that person was a  
25 managing agent officer or director.

1           Does your order with respect to former employees apply  
2 only to former employees that we would have an obligation to  
3 produce if they were still current, or was it intended to be  
4 broader than that?

5           THE COURT: I guess I would reserve a ruling at this  
6 time on that precise issue, but I would say that typically the  
7 way parties operate is that a defendant corporation will make  
8 available its employees. I think it may be that the obligation  
9 legally is just as to managing agents and directors and the  
10 like.

11           You start to get into ethical questions about whether  
12 or not lawyers from opposing side can contact employees, and  
13 there is all sorts of ethical case law about how low down the  
14 food chain that employee needs to be before you don't have an  
15 ethical problem. And I think in my experience, lawyers  
16 typically simply agree that the company will produce all of its  
17 employees that are called for deposition.

18           You may object to a particular witness for a  
19 particular reason and have a conversation about that, but that  
20 typically, in part, out of a courtesy to your own employees,  
21 that corporations do produce their own employees regardless of  
22 where they are on the hierarchy.

23           MR. COTTREAU: Your Honor, one quick thing. Steve  
24 Cottreau for Dubai Islamic Bank.

25           With respect to the case law that you got from

1 Mr. Haefele we never had a chance to respond to because we had  
2 a simultaneous exchange of briefs. As you're reading through  
3 it, a lot of those cases involve former officers, directors,  
4 and managing agents who were then demoted by the corporation of  
5 a status of a former employee. A lot of those cases deal with  
6 that ruse by those parties trying to get around having to  
7 produce those people.

8 Also, there is a strand -- this is a very narrow  
9 exception -- where the former officer, director, or managing  
10 agent still is somehow under the control of the corporation or  
11 still closely identified with that corporation that the courts  
12 are essentially saying they are not former, at least in terms  
13 of your ability to control them. A lot of those cases involve  
14 employees that the corporation has been able to put up for  
15 depositions in other cases and still be able to have their  
16 cooperation.

17 I think it is a very narrow exception and maybe is  
18 better off handled by you on a case-by-case basis if it ever  
19 even comes up as an issue in the case.

20 THE COURT: Very well, thank you.

21 MR. HAEFELE: Your Honor, I would agree that is  
22 exactly what the case law says. It is a case-by-case basis,  
23 and we have no problem with looking at it on a case-by-case  
24 basis, but a rule that says that we can't notice their  
25 depositions and they cannot be produced by the corporation is

1 somewhat of an issue for us.

2 THE COURT: Why isn't the best practice then to --  
3 again, this goes back to the point of starting this  
4 conversation now -- if you identify 15 people from Dubai  
5 Islamic Bank that you know you want to depose and ask counsel,  
6 will you produce these people, and he'll say yes to this one,  
7 no to that one, yes to this one, no to that one. And then you  
8 have a meet-and-confer on the noes, and raise the issue to me  
9 at that point rather than legislate, at this point in the  
10 protocol.

11 It may be more productive to have a general rule that,  
12 generally speaking, former low-level employees are not under  
13 the control of the corporation, but that the parties will work  
14 cooperatively to identify people to be deposed.

15 Look, this litigation is contentious because of the  
16 nature of the claims. It seems to me that the lawyers can do  
17 their part by making this sort of issue not contentious. My  
18 recommendation would be that we settle on some very broad  
19 terms, some sort of best practices, but on a case-by-case basis  
20 because each will be unique, because it may be that one witness  
21 truly is a low-level former janitor who maybe heard something  
22 and you want to depose that person, or it may be that the  
23 person really still is making the major decisions for the  
24 corporation, even though they are not technically not on the  
25 letterhead.

1                   MR. HAEFELE: I think one of the circumstances that we  
2 can think of actually runs quite similar to what Mr. Cottreau  
3 indicated wasn't the circumstance here, but it is that  
4 situation where someone was a fairly high-ranking official  
5 with one of the organizations and continued to be with the  
6 organization for years. The defendants kept getting extensions  
7 to their document production, and toward the end of that  
8 process, after years of being in the litigation and after the  
9 motions to dismiss were decided, then suddenly they said the  
10 official becomes a former official at the entity. If we had  
11 fast-tracked some of the discovery processes, we may have had  
12 that person. We may or may not, depends on whether or not he  
13 was released as a result of suddenly becoming available for  
14 depositions.

15                   What I would want to make sure isn't the circumstance  
16 is that the defendants aren't getting the benefit of releasing  
17 individuals who are defendants, releasing themselves from the  
18 entity so that they can then have the benefit of avoiding  
19 discovery on that.

20                   THE COURT: Right. This seems like a perfect example  
21 of a situation where a conversation with counsel may or may not  
22 be productive. Then you can bring specific facts to me and I  
23 can make a ruling. And obviously if I rule that the person  
24 should be considered a current employee of the company and  
25 should be produced by the company and the company refuses, then

1 you'll make the appropriate application at that time.

2 MR. HAEFELE: Thank you.

3 THE COURT: I am going to skip for one moment  
4 paragraph 31 and go back to it. I think that is the big one,  
5 although it is little on the protocol.

6 The Friday issue should not be an issue. If there is  
7 a religious barrier to parties appearing at a deposition  
8 because it is scheduled for a Friday, then the parties should  
9 make changes. People can take depositions Monday through  
10 Thursday, if that is what needs to happen here, but I am not  
11 going to let religious observance be sacrificed for  
12 depositions.

13 With respect to paragraph 35, which has to do with  
14 depositions to preserve testimony, I understand that the  
15 plaintiffs' Executive Committee wants to exchange Rule 26  
16 disclosures, a proffer of the witness' testimony, and a copy of  
17 each of the documents that the party that noticed the  
18 preservation deposition anticipates using.

19 I am not going to impose Rule 26(a) disclosure  
20 obligations for these witnesses. It wouldn't otherwise be  
21 imposed for the purpose of this particular exercise. Obviously  
22 if the witness is under 26(a) obligations already, then that  
23 person should be complying with those obligations, but I am not  
24 going to impose them as additional obligations for somebody who  
25 the parties seek to preserve the testimony.

1           I do think it is appropriate that any party that is  
2 going to be testifying for preservation purposes should be  
3 obligated to proffer the subject matter of the testimony. But  
4 something more than that, I think the general substance of the  
5 anticipated testimony is fair and reasonable. I am considering  
6 how this would play out if it was just simply the person  
7 testifying at trial, and I think we all agree that trial by  
8 ambush is not how we try cases anymore or ever.

9           The cross-examining lawyer, as it were, would  
10 certainly know the purpose of the person's testimony and some  
11 sense about what the person is going to testify to. I think a  
12 proffer is appropriate in advance of that deposition.

13           With respect to the issue of identifying exhibits, I  
14 don't think there is a basis for that obligation. I'll note  
15 that the Defendants' Executive Committee has expressed a  
16 willingness to have a mutual exchange of exhibits, and so if  
17 the Plaintiffs' Executive Committee thinks that it is  
18 sufficiently important that they have the exhibits that the  
19 attorney who noticed the deposition intends to use, it should  
20 be a mutual exchange. Otherwise, I am not going to require  
21 that there be an exchange of the anticipated exhibits in  
22 advance of that deposition.

23           A minor point, paragraph 39, which is letters to me  
24 about deposition scheduling. I think three pages is more than  
25 enough. You identified five pages.

1                   Paragraph 73, the duration of depositions, I  
2 appreciate that this is a complex litigation and that there is  
3 significant interest in the discovery of the truth here both by  
4 the interested parties, the plaintiffs, all of the parties in  
5 the case, as well as the public, but I don't think there is a  
6 need to lift the seven-hour presumptive rule for depositions.  
7 The parties have proposed, or I think the Defendants' Executive  
8 Committee has proposed, that in certain instances the parties  
9 can agree to a deposition that would last ten hours if there is  
10 a good faith basis for believing that the deposition was  
11 sufficiently complex. But that should be the exception, not  
12 the rule, otherwise, I am imposing a seven-hour presumptive  
13 rule per side.

14                   I know in other portions of the protocol you discussed  
15 having multiple people ask questions even from the same side.  
16 That seven hours would apply to each side, meaning the  
17 plaintiffs, however that is divided up, would get seven hours,  
18 and the defendants, however that is divided up, would get seven  
19 hours.

20                   With respect to the use of an interpreter, I think an  
21 additional half-time for that is adequate. You will all get  
22 excellent interpreters who can do something pretty close to  
23 realtime interpretation. We obviously have interpreters here  
24 all the time here, particularly in criminal matters. They  
25 basically work at realtime. I think an additional half-time is

1 adequate for any deposition where an interpreter is  
2 contemplated.

3           Lastly is paragraph 89, which I think has been  
4 resolved. This was the attorney consultation provision. I  
5 understand that the Plaintiffs' Executive Committee ultimately  
6 proposed a more modest amendment, which I think is reasonable,  
7 simply an admonition that the attorney-client communication  
8 should be kept to a minimum and that communication shouldn't be  
9 used to coach the witness or in any way sort of encourage or  
10 shape the witness's testimony. I think we can all agree to  
11 that. If we want to add that as part of the protocol, that  
12 seems fine by me.

13           So the paragraph that I set aside for further  
14 discussion is paragraph 31. That is the paragraph that says  
15 that on May 2, which is the date proposed in paragraph six for  
16 the amended witness statements, witness disclosure, that that  
17 would trigger the parties' conversation about numbers of  
18 depositions. I don't think we need to wait until that point in  
19 time. I've been gaming out the next couple months on this  
20 case, and I have reversed my initial instinct, which was that  
21 the March 2 deadline was too far in the distant future. To the  
22 extent I assume that the parties have made Rule 26 disclosures,  
23 those should be done on a rolling basis. I think it would  
24 probably be helpful to have an additional maybe interim  
25 deadline of the end of the year, December 31, but I appreciate

1 that there is going to be document production, including some  
2 that won't be completed until the end of this month and fully  
3 reviewed probably for another couple months. I understand  
4 that there may be some delays that would make the March 2  
5 deadline reasonable. That deadline stays. I do think there  
6 should be an interim production before then.

7           But what I don't think we need to do is wait until  
8 that moment in time to start talking about deposition numbers.  
9 I actually have no sense from the parties, nothing has been  
10 shared with me to give me a sense of how many depositions we  
11 are talking about here. In actuality, there aren't that many  
12 defendants. I don't know whether or not there has been any  
13 discussion about how many witnesses per defendant would be  
14 called upon. I think that that is a conversation that the  
15 parties are competent to have at this time, and I don't want to  
16 wait until March for you all to start that conversation, only  
17 to spend a month having meet-and-confer, only to disagree and  
18 then come to me, and now I am not ruling on the number of  
19 depositions until June.

20           It seems to me that this is a conversation that, if it  
21 hasn't already started happening, it should happen. I'm happy  
22 to hear from the parties about what they think is the best way  
23 to proceed, but I am inclined to secure the number of  
24 depositions that are going to be authorized under this protocol  
25 in the near term, not in March, so that the parties can be in

1 a position that they can start taking depositions this spring,  
2 which I think is a reasonable position for the parties to be  
3 in.

4                 Maybe I'll start with the Plaintiffs' Executive  
5 Committee. Have you started either an internal conversation or  
6 a bilateral conversation about the number of depositions you  
7 are anticipating?

8                 MR. CARTER: Your Honor, I think the short answer is  
9 yes. We obviously have a fairly good sense at least certain  
10 of the witnesses we want to depose. Part of the reason for  
11 deferring a very specific conversation about the universe was  
12 that we did have these document productions coming in,  
13 identifying new witnesses that may affect who we choose to  
14 depose. We may find someone who can answer a universe of  
15 questions that alleviates the need for three other depositions.  
16 We were focused on that.

17                 There are certainly a number of depositions that we  
18 can say right now, you know, these are folks that we want to  
19 depose and intend to depose. We have a bit of a reservation  
20 doing the depositions before the documents come in because of  
21 the potential that new things come up that require us to go  
22 back again and revisit the same deposition. But we could, on a  
23 rolling basis, identify witnesses for the defendants.

24                 THE COURT: I'll tell you how I handle complex cases.  
25 Typically I will hear from the parties with a magic number; I

1 think I need to take this many depositions from this party and  
2 this many from this party. And maybe the parties reach  
3 agreement. Hopefully they do. Sometimes they come to me and  
4 say, on the pure number, we can't reach agreement.

5 At that point, what I have done is have the parties  
6 justify why they need to take, I'll keep simple, ten  
7 depositions. And they'll identify the ten witnesses they think  
8 are critical, and they will give me basically why they think  
9 those witnesses are critical. And I'll hear from the other  
10 side as to why they are duplicative or they don't have relative  
11 information. It would be a waste of everybody's time.

12 Then often what I will do is simply rule that instead  
13 of ten, you get eight, and you can figure it out then. But I  
14 think that process needs to start now. Even if we don't start  
15 identifying specific individuals, I think we can start getting  
16 a sense of how many we think is reasonable.

17 To the point about issuing a ruling on the protocol, I  
18 am not inclined at this point to sign off on this protocol. I  
19 think I have given you some instructions on ways to go back to  
20 it. This, I think, is a great foundation, but what I would  
21 like to do, because I think the most important thing in this  
22 protocol is how many depositions people are going to take and  
23 some deadlines as to when those are going to happen, what I  
24 would like to do is have the parties go back and start having  
25 an internal conversation, and then a bilateral conversation

1 about the number of depositions, and when they think those  
2 depositions can reasonably start. It seems to me, based on my  
3 gaming out the system and the motions to compel that I  
4 anticipate and the responses to those motions to compel, that  
5 depositions should be able to start sometime in April or May.  
6 I think that that is reasonable.

7 And so what I would like to do now is start having you  
8 do the hard work of thinking about who do you actually want to  
9 depose. How many people is it? Is it 100? Is it 50? Is it  
10 15? I don't know. Having those conversations with everybody  
11 and then presenting either a joint proposal to me or competing  
12 views, and then we can start talking about how to shave the  
13 number to make it more equitable.

14 I can't tell, Mr. Carter, if you're waiting to say  
15 something.

16 MR. CARTER: Mr. Haefele is writing me a note.

17 THE COURT: OK.

18 MR. CARTER: Your Honor, I think we can have that  
19 conversation and we can advance the ball in terms of  
20 identifying who, and some of that is going to be impacted about  
21 who is available and the circumstances under which they can be  
22 made available.

23 Yes, we can start that conversation for sure.

24 THE COURT: I am going to set a separate deadline for  
25 us to revisit this issue so that we can keep this conversation

1 moving.

2           The last set of discovery, so what you're still  
3 waiting on is the WAMY discovery, and that should be provided  
4 by the end of September. I understand that there may be  
5 motions to compel, there may be gaps. You'll get at least  
6 their first batch or their presumptive completion, I should  
7 say, by the end of September.

8           What if we set November 3 as a deadline for a letter  
9 to be submitted with the parties' proposal. Maybe what we  
10 should get then is the revised protocol based on my rulings  
11 today, and it should include in that revised protocol, the  
12 parties' proposal with respect to the number of depositions  
13 that are going to be taken, and a reasonable date to start  
14 those depositions and a reasonable date to conclude those  
15 depositions.

16           I am not foolish enough to think that you all are  
17 going to agree on those pieces of information, so you can do  
18 the same thing that you did with respect to the initial  
19 protocol with competing arguments as to why one position or  
20 another is appropriate.

21           MR. CARTER: Your Honor, can I just touch upon the  
22 November 3 date?

23           THE COURT: Sure.

24           MR. CARTER: The oppositions to Saudi Arabia's renewed  
25 motion to dismiss are due on November 2.

1           THE COURT: You don't want this due back to back?

2           MR. CARTER: I have a feeling we're all going to be --

3           THE COURT: Drunk probably.

4           MR. CARTER: -- dealing with a deeper issue.

5           I didn't say it, your Honor. If we can maybe move  
6 that date just a bit?

7           THE COURT: What if I give you to November 15?

8           MR. CARTER: That would be fine, your Honor. Thank  
9 you.

10          THE COURT: Again, the number of depositions, to the  
11 extent you all know better than I do if there is going to be  
12 disputes about specific witnesses that are going to be called  
13 upon, I'm happy to hear about that on the 15th as well, if you  
14 think that is ripe for resolution.

15          That issue, I feel like, we can set aside if we need  
16 to, but I would like to start getting some limits on the number  
17 of depositions. So what I do want to at least develop is the  
18 number of depositions that each side is going to be entitled  
19 to, when those depositions are going to begin, when those  
20 depositions are going to end. And I can get a revised protocol  
21 based on rulings today with a goal of getting a protocol so  
22 ordered on the docket by the end of the year that has firm  
23 dates and real expectations for the parties to move forward  
24 with depositions. I think that that is reasonable.

25          I think that that addresses everything. The other

1 housekeeping thing I just want to reference again, I won't  
2 quote Mark Twain, but I think you all can edit your letters  
3 more. My individual rules permit only five-page letters, and  
4 there is really no reason for these letters to be longer than  
5 five pages. I will remind you of my individual rules. If  
6 there is a reason why you need to seek relief from that  
7 limitation, you may do so, but five pages is really enough for  
8 you to get your thoughts to me.

9                 This is a case where I am probably going to be having  
10 plenty of conferences. I'll always give you the opportunity to  
11 be heard. If you feel like you're not able to fully express  
12 yourselves in your letter, I'll give you an opportunity to do  
13 so orally. For my own docket management, five pages is  
14 adequate from everybody.

15                 MR. CARTER: Your Honor, just as a point of  
16 clarification, a lot of the motions to compel have been done  
17 via letter, and we had, I think, some page limits for motions  
18 to compel by letter.

19                 Would that apply as well to those?

20                 THE COURT: I think what I was going to do was issue  
21 an order with some dates, and I was going to incorporate in  
22 that sort of a little bit of instructions about page limits and  
23 whether it should be by letter motion or letter motion.

24                 I know Judge Maas preferred to have everything by  
25 letter motion. I actually may prefer it by proper motion, so I

1       might have it come more as a brief than a letter.

2           MR. CARTER: Thank you, your Honor.

3           THE COURT: But I'll put that in the order.

4           Anything further from any side?

5           Great. I will hear from you all in the coming weeks  
6 and months.

7           Be well.

8           (Adjourned)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25